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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/676,490

10/01/2003

John R. Bestermann

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21924 7590 03/28/2008
ARRIS INTERNATIONAL, INC
3871 LAKEFIELD DRIVE
SUWANEE, GA 30024

EXAMINER

VO, NGUYEN THANH

ART UNIT

PAPER NUMBER

2618

MAIL DATE

DELIVERY MODE

03/28/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 03/07/2008 have been fully considered but they are not persuasive.

Response to applicant's remarks in section B, pages 2-3

Applicant argues that Hrastar discloses maintaining a database that includes information related to locations of cable modems, instead of performance data as recited in the claims. The examiner, however, disagrees. Applicant's attention is directed to Hrastar, column 19 which clearly discloses maintaining a database that includes performance data as recited in the claims. In this case, parameters such as "Number of Packet Discarded", "Number of Uncorrectable Packets", "Packet Loss Rate", "Bit Error Rate" at column 19 read on performance data as claimed. Database such as modem pool 135 at column 19 lines 21-24 or MIB at column 19 lines 25-31 reads on a database as claimed.

Regarding Terreault, applicant argues that Terreault discusses analyzing QAM signals, but does not discuss a method and system for remotely collecting QAM samples at a user device, assembling them into packets, sending the packets to another location, and analyzing the information in the packets. The examiner, however, believes applicant attacks references individually in a 103 rejection. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case,

the primary reference Hrastar discloses a method and system for remotely collecting samples at a user device, assembling them into packets, sending the packets to another location, and analyzing the information in the packets (see the Final Action, paragraph number 2). The secondary reference Terreault discloses that the performance data is IQ data corresponding to symbol data in a QAM modulation scheme (see the Final Action, paragraph number 4). The combination of Hrastar and Terreault thus would result a method and system for remotely collecting QAM samples at a user device, assembling them into packets, sending the packets to another location, and analyzing the information in the packets as recited in the claims.

Still regarding Terreault, applicant argues that the finality of the previous action is improper because Terreault is a newly-cited prior art, and the previous amendment made a correction to a minor typographical error in claim 2. The examiner, however, disagrees. The finality of the previous action is proper because Terreault is only cited in response to applicant's challenge of the examiner's official notice. The M.P.E.P., section 2144.03 D states that:

“If the examiner adds a reference in the next Office action after applicant's rebuttal, and the newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and it does not result in a new issue or constitute a new ground of rejection, the Office action may be made final. If no amendments are made to the claims, the examiner must not rely on any other teachings in the reference if the rejection is made final. If the newly cited reference is added for reasons other than to support the prior common knowledge statement and a new

ground of rejection is introduced by the examiner that is not necessitated by applicant's amendment of the claims, the rejection may not be made final. See MPEP § 706.07(a)".

Response to applicant's remarks in section C, pages 3-5

Applicant's remarks in section C is the same as applicant's remarks filed on 08/30/2007. Accordingly, applicant's attention is directed to the examiner's comments as set forth in the final action filed on 11/06/2007, pages 5-6.

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NGUYEN VO whose telephone number is (571)272-7901. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Nguyen Vo/
Primary Examiner, Art Unit 2618
03/24/2008